

BILL NO. 2326

**ORDINANCE NO. 2326**

AN ORDINANCE MODIFYING CHAPTER 102 – TREES AND LANDSCAPING, OF THE LADUE CODE OF ORDINANCES OF THE CITY OF LADUE

**WHEREAS**, Ordinance 2165 was adopted on November 20, 2017 by the City Council and established Chapter 102 – Trees and Landscaping, which replaced former Chapter 102 that pertained to trees and shrubs, and has been periodically updated since that time including to establish the Beautification, Open Space, and Tree Advisory Committee (BOSTA) and to modify requirements regarding tree removal permits in the City; and

**WHEREAS**, The City has been in receipt regarding concerns about excessive tree removal in addition to the process in which tree removal permits are reviewed which is addressed in Article II of the Chapter 102 while the City also desires to review and update the duties and responsibilities of BOSTA and establish regulations regarding running Bamboo; and

**WHEREAS**, At the BOSTA meetings that were held on December 8, 2022 and January 12, 2023, these concerns were discussed, and a motion passed recommending modifications to the Code of Ordinances; and

**WHEREAS**, City Council, after careful review, desires to and finds it in the best interests of the community to modify certain portions of Chapter 102, Articles I, II & V; and add Article VI: Running Bamboo; and

**WHEREAS**, A copy of this bill has been made available for public inspection prior to its consideration by the Council and read by title two times in an open meeting prior to passage.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LADUE, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:**

**SECTION 1.** The City of Ladue hereby modifies portions of Chapter 102 of the Code of Ordinances, as shown on the attached Exhibit A, which is incorporated herein by reference, with proposed new language depicted in red font including the addition of Article VI. All other provisions within Chapter 102 not modified by Exhibit A shall remain in full force and effect.

**SECTION 2.** This Ordinance shall be in full force and effect from and after its adoption and approval by the Mayor.

**PASSED THIS 21ST DAY OF FEBRUARY 2023.**

\_\_\_\_\_  
President, City Council

ADOPTED AND APPROVED THIS 21ST DAY OF FEBRUARY 2023.

\_\_\_\_\_  
Nancy Spewak, Mayor

**ATTEST:**

\_\_\_\_\_  
Stacey Mann, City Clerk

## Exhibit A

### Sec. 102-5. - Invasive species.

No planting shall take place of the following nuisance or invasive plants/trees; see complete list established by Missouri Department of Conservation **as amended**. This list includes, but is not limited to, honeysuckle species (bush honeysuckle, Japanese honeysuckle) and bamboo (**all running types**).

### Sec. 102-9. - Definitions.

The following words, terms, and phrases, when used in this article and article III, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Caliper* means the diameter of a tree trunk measured at either six (6) inches above the ground or twelve (12) inches above the ground. Trees that measure up to four (4) inches in diameter at six (6) inches above the ground have a caliper equal to the diameter measured. If the initial diameter measurement at six (6) inches above the ground is more than four (4) inches, then the measurement should be taken at twelve (12) inches above the ground and the caliper is equal to the diameter measured at twelve (12) inches above the ground up to twelve (12) inches in diameter. Typically used to describe the size of nursery stock or recently planted trees. For trees with multiple stems, the caliper of each stem shall be measured, and the average of all measurements shall constitute the caliper of the tree. If the diameter measurement taken at twelve (12) inches above the ground is more than twelve (12) inches, then the diameter at breast height should be used. (See definition of "Diameter at breast height (DBH)".)

*Condition, existing trees* means:

- (1) *Good condition*. The tree shape and form are average to excellent. The tree has a good main trunk. The branches may be crowded with minor branch dieback. There are few or minor pests, good leaf color and size, and no obvious root or structural problems.
- (2) *Fair condition*. The tree needs pruning of live or dead branches due to habit, decline, or lack of maintenance. The tree may have pest problems or minor trunk damage, poor branch angle or multi-trunks. There are no obvious structural or hazardous conditions.
- (3) *Poor condition*. The tree has many dead branches, splitting trunk, and hazardous branches with more than half of the crown dead. The tree may be leaning, have structural problems, or extensive damage from insects or disease.
- (4) *Dead/dying condition*. The tree has **sixty (60) per cent** branch dieback or trunk decay, storm damaged branches, heavy pest problems, or already dead and needing to be removed.

### Sec. 102-10. - City arborist.

The city shall have a certified arborist either on staff or as appointed by the mayor for the purpose of reviewing tree removal permit applications and tree replacement plans. Any permit submitted with **five (5) or more trees proposed for removal, when twenty (20) percent of the trees are proposed to be removed on the property, when twenty (20) percent or more of any woodland is proposed to be cleared on the property, or when any Landmark Tree is proposed for removal,** shall require the review of the Beautification, Open Space and Tree Advisory Committee in addition to the review by the city arborist. **This section shall apply to public property, private property, or public right-of-way.**

### Sec. 102-11. - Tree removal permit, fee, and replacement requirements—Required.

- (a) No person shall remove, injure, damage, or cause the death of a living tree having a caliper of six (6) or more inches, or clear or cut within a woodland area any trees having a caliper of three (3) inches unless the person has first secured a permit from the city. **Except that trees that are determined to be dead/dying shall not require a permit for removal. Such determination must be in writing and made by a certified tree professional. Failure to obtain a required permit prior to tree removal will result in the requirement for tree replacement in accordance with the requirements below.**

- (b) No person shall remove, injure, damage, or cause the death of any living tree or other vegetation from the city's right-of-way unless the person has first secured a permit from the city.
- (c) No person shall remove, injure, damage, or cause the death of any living tree within a stream buffer as outlined in chapter 110, article IV.
- (d) Tree replacement is required when **twenty (20)** percent of the trees are proposed to be removed on the property or when **twenty (20)** percent or more of any woodland is proposed to be cleared on the property. If **twenty (20)** percent or more of the trees or woodlands on the property are removed, any tree scheduled for removal having a caliper of six (6) inches or more shall be replaced by a tree having at least a six-inch caliper or with two (2) three-inch caliper equivalent trees. At least half of the replacement trees must be canopy trees from the approved tree list and **fifty (50) percent** of replacement trees must be a native species. **Replacement trees must be properly maintained to ensure viability. The City may inspect properties that require tree replacement for up to three (3) years after planting to ensure the viability of such plantings. Any replacement tree that has died will require replacement in accordance with the findings of the inspection.**
- (e) The fee for the tree removal permit, for live trees, shall be \$135.00 to cover the costs incurred for tree removal permits that only involve staff review, in order for the city arborist to visit the site, review the plan, and inspect tree replacement. The fee for the tree removal permit, for live trees, shall be \$270.00 for projects that require the review of the Beautification, Open Space, and Tree Advisory Committee in addition to review by the city arborist. A \$100.00 deposit will be required prior to issuance of the permit for projects requiring tree replacement.
- (f) Tree removal permits shall bear the original signature, printed name, and date of signature from a minimum of two (2) trustees of the respective subdivision certifying either compliance with the subdivision's restrictions or indentures or disapproval of such plans for failing to comply with the subdivision's restrictions or indentures. Provided, however, that if the applicant demonstrates to the satisfaction of the city that the subdivision does not have a sufficient number of trustees to secure the signatures of two (2) trustees at the time an application is made, then the plans submitted shall bear the original signature, printed name, and date of signature of one (1) trustee, if possible, and if not possible, the requirement of this Section shall be deemed satisfied. Provided, further, that if the applicant demonstrates to the satisfaction of the city that the plans submitted were submitted to the subdivision trustees and such trustees failed and/or refused to act upon such submission either by accepting such plans or rejecting them within thirty (30) business days of submission, the requirement of this Section shall be deemed satisfied. Plans shall not be accepted by the city and/or submitted to the Beautification, Open Space, and Tree Advisory Committee, if applicable until the applicant satisfies the requirements of this Section. The trustees' rejection of such plans evidenced by their signatures shall not constitute a failure or refusal to act on such plans as set forth herein. The city does not assume the enforcement of any restrictions placed upon such plans by subdivision trustees and shall review and act on submitted plans in accordance with the city's regulations and requirements regardless of any disapproval or approval notification from the trustees.

In conjunction with issuance of the tree removal permit, the City will provide a tree removal permit card which must be displayed at the property during the tree removal process and shall not be removed until completion of the work.

## **ARTICLE V. BEAUTIFICATION, OPEN SPACE, AND TREE ADVISORY COMMITTEE**

#### **Sec. 102-25. Creation and establishment.**

A Beautification, Open Space, And Tree Advisory Committee (the "committee") is hereby created and shall consist of **seven (7)** members who shall be residents of the city. Members shall be appointed by the mayor with the approval of the city council. The director of public works or his/her designee shall serve as staff liaison to the committee and will serve in an ex-officio capacity. To the extent possible, there shall be one (1) member from the public works committee and at least two (2) members from community beautification groups serving on this committee.

#### **Sec. 102-26. Term of office.**

Each member of the committee shall serve for a term of three (3) years. The **seven (7)** member committee shall elect a chairman and a vice-chairman who shall serve in those positions for twelve (12) months at which time a new election is to be held to determine those position holders.

#### **Sec. 102-27. Meetings.**

The committee shall meet **monthly as necessitated by tree removal applications or other pertinent agenda items, but no less than quarterly**. Meetings will be open to the public and are to be publicly advertised at least twenty-four (24) hours in advance of a meeting date and time. Meeting minutes shall be recorded, then approved at the following meeting by a majority of the voting members present. **Four (4)** members shall constitute a quorum for the transaction of business.

#### **Sec. 102-28. Duties and responsibilities.**

Duties shall include, but are not limited to:

- (1) Consider and make recommendations to the mayor, city council, and city staff regarding open space, parks, beautification, and forestry initiatives in the city.
- (2) Maintain connection with the garden clubs and beautification groups that are active in the city.
- (3) Advise and assist the mayor, city council, and city staff in the development and dissemination of information for the management, selection, planting, care, cultivation, pruning, and removal of trees and shrubs on both public and private property. Review and advise on tree removal applications when **five (5) or more** trees are being proposed for removal from public property, public right of way, or private property, when **twenty (20) percent** of the trees are proposed to be removed on the property, when twenty (20) percent or more of any woodland is proposed to be cleared on the property, and when any **Landmark Tree is proposed for removal**. The committee shall have thirty (30) business days to complete their review and **make their recommendations**.
- (4) Plan and coordinate an annual city Arbor Day observance event.
- (5) Assist the city in **maintaining** Tree City USA status with the National Arbor Day Foundation.
- (6) When requested then authorized, provide educational resources and engage the community in various events and efforts that promote the benefit and management of the urban forestry and the other initiatives of this committee.

### **ARTICLE VI – RUNNING BAMBOO**

#### **102-29. Purpose and Intent.**

The purpose of this Article is to preserve and protect private and public property, native plant materials, and property values from the damaging spread of running bamboo grasses.

It is the finding of City of Ladue that the planting or the growing of running bamboo within City of Ladue has been and will continue to be destructive to the natural environment and destructive to structures and walkways on properties adjoining and neighboring those properties where running bamboo has been planted or permitted to grow; and because of these effects, the planting or

growing of running bamboo threatens the value and physical integrity of both public and private property in City of Ladue. Therefore, to protect and preserve said environment and property values, it is the intent of City of Ladue to regulate the planting or growing of running bamboo within City of Ladue.

**102-30. - Definitions.**

As used in this Article, the following terms shall have the following meanings:

**RUNNING BAMBOO** means any tropical or semi-tropical grass with a monopodial (leptomorph) rhizome (root) system characterized by aggressive spreading behavior, typically producing rhizomes far away from the plant. Running bamboo includes, but is not limited to, the plant genera Phyllostachys. In the event bamboo is found to have encroached, spread, invaded, or intruded upon any other property or public right of way, said species shall be presumed to be classified as "running bamboo." This presumption shall be rebuttable by the property owner where the bamboo originated. As used in this Article, running bamboo shall not include clumping bamboo.

**CLUMPING BAMBOO** means any tropical or semi-tropical grass with a sympodial (pachymorph) root system that typically produces rhizomes near the base of the plant.

**102-31. - Duty to contain running bamboo; exception.**

- (a) Except as provided in subsection C of this section, a landowner on whose property running bamboo grows shall not allow the running bamboo to spread from his property to any adjoining property not owned by the landowner or within fifteen (15) feet of a public right of way or a public roadway.
- (b) Except as provided in subsection C of this section, a landowner on whose property running bamboo grows shall install or implement an appropriate containment measure, in accordance with section 102-32, effective at preventing such running bamboo from spreading from his property onto an adjoining property not owned by the landowner or within fifteen (15) feet of a public right of way or public roadway.
- (c) A landowner on whose property running bamboo has spread from an adjoining property shall not be required to install or implement a containment measure to prevent the spread of this running bamboo if he did not plant the running bamboo or cause the running bamboo to be planted or grown on his property.

**102-32. - Containment measures.**

- (a) An appropriate containment measure is any measure that prevents running bamboo from spreading to adjoining property or within fifteen (15) feet of public right of way or public roadway.
- (b) A barrier used as a containment measure shall be:
  - (1) Impenetrable to running bamboo; and
  - (2) Installed at a sufficient depth within the property where the running bamboo is planted or growing to prevent the growth of the running bamboo on or the encroachment of the running bamboo upon adjoining property or within fifteen (15) feet of a public right of way or public roadway.

roadway.

- (c) A trench used as a containment measure shall be a sufficient depth within the property where the running bamboo is planted or growing to prevent the growth of the running bamboo on or the encroachment of the running bamboo upon adjoining property or within fifteen (15) feet of a public right of way or public roadway.

### **102-33 - Penalties.**

Except as otherwise provided by law or ordinance, a person convicted of a violation of this Code shall be punished with a fine not to exceed \$1,000.00, by imprisonment not exceeding 90 days, or both such fine and imprisonment, as may be just for any offense. Where the city and the state have a penalty for the same offense, the penalty for the city offense, including fine and costs, shall not exceed the penalty as set by statute for the state offense.